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Supreme Court of the United States

October Term, 1968

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JOHN F. DAVIS, CLERK

In the Matter of:

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RODERICK JENKINS,

Appellant;

vs.

JOHN JULIEN MCKEITHEN, CECIL MORGAN,
PAUL M. HEBERT, FLOYD C. BOSWELL,
RALPH F. HOWE, A. R. JOHNSON, III
AND BURT S. TURNER

Appellees.

-----X

Docket No. 548

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Place Washington, D. C.

Date March 25, 1969

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ARGUMENT OF:

P A G E

J. Minos Simon, Esq.
on behalf of Appellant 2

Ashton L. Stewart, Esq.
on behalf of Appellees 24

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 -----x
4 RODERICK JENKINS,

5 Appellant;

6 vs.

No. 548

7 JOHN JULIEN McKEITHEN, CECIL MORGAN,
8 PAUL M. HEBERT, FLOYD C. BOSWELL,
9 RALPH F. HOWE, A. R. JOHNSON, III,
0 AND BURT S. TURNER,

Appellees.
-----x

1 Washington, D. C.

2 March 25, 1969

3 The above-entitled matter came on for argument at

4 1:30 p.m.

5 BEFORE:

- 6 EARL WARREN, Chief Justice
- 7 HUGO L. BLACK, Associate Justice
- 8 WILLIAM O. DOUGLAS, Associate Justice
- 9 JOHN M. HARLAN, Associate Justice
- 0 WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- ABE FORTAS, Associate Justice
- THURGOOD MARSHALL, Associate Justice

1 APPEARANCES:

2 J. MINOS SIMON, Esq.
3 1408 Pinhook Road
4 Lafayette, Louisiana
5 Counsel for Appellant

ASHTON L. STEWART, Esq.
Special Assistant Attorney General
State of Louisiana
604 Union Federal Building
Baton Rouge, Louisiana 70801
Counsel for Appellees

1 P R O C E E D I N G S

2 MR. CHIEF JUSTICE WARREN: Mr. Simon, you may proceed
3 with your argument.

4 ARGUMENT OF J. MINOS SIMON, ESQ.

5 ON BEHALF OF APPELLANT

6 MR. SIMON: Mr. Chief Justice, may it please the Court:

7 The case presents for the consideration of the Court
8 the validity of a State statute enacted by the 1967 Legislative
9 Session of Louisiana.

10 The issues presented are composed and framed by the
11 pleadings, inasmuch as the lawsuit instituted by the plaintiff
12 was dismissed in connection with a motion to dismiss filed by
13 the defendants in this case.

14 The decision relies upon the holding of this Court in
15 the case of Hannah versus Larche which involved an interpreta-
16 tion of the Commission on Civil Rights, or the Civil Rights
17 Commission, that was enacted by Congress recently, and also
18 partly relies upon a decision of the highest court of the State
19 of Louisiana interpreting or giving its own interpretation of
20 what this Court held and what is the effect of the particular
21 statute in question.

22 That decision was rendered in Martone versus Morgan,
23 which is before this Court on rehearing. It is docketed under
24 No. 216 on the docket of the 1968 term of the Court.

25 The plaintiff, in substance, complains that the Act,

1 as a matter of law, is unconstitutional, and also, as admin-
2 istered against him, the plaintiff alleges that he is a member
3 of a trade union, and that the Act in question has been admin-
4 istered discriminatorily against him and members of the union in
5 question, resulting in repressive actions.

6 I submit to Your Honors that the Hannah decision did
7 not involve the type of legislation that is involved in the case
8 before you. I think perhaps a very quick reference to the essen-
9 tial structure of the commission that was created by this Act,
10 as well as its function, will illustrate the point that I am
11 emphasizing at this time.

12 The Act was passed as an emergency act in the State of
13 Louisiana, apparently resting under the allegation that there was
14 some labor strife in the community of the State Capital of
15 Louisiana. The Legislature, in the enactment of this statute,
16 created what is designated as a "Labor-Management Commission of
17 Inquiry."

18 Significantly, this agency, or this commission, operates
19 on an ad hoc basis. It operates only when the Governor of the
20 State demands or requests that it operate, and it investigates
21 only in that area outlined and delineated by the Governor him-
22 self in requesting the investigation.

23 It is significant to point out that all the officials
24 of State Government, from the top to the very bottom, every
25 employee, every agency, every department, every commission, are

1 impressed into cooperative service with the members of this
2 commission, by virtue of the provisions of Section 880.6(d).

3 We should also like to emphasize that the investigative
4 forces of the commission can be assigned to the State Police and,
5 during that assignment, they have all the powers of State Police.

6 The commission itself has endowed itself, or been en-
7 dowed, with plenary powers of subpoena. It can take depositions
8 anywhere in the United States. And also, it can compel obedience
9 to its orders through the process of contempt proceedings.

10 Equally significant is the fact that this commission
11 expressly does not have any power or authority or jurisdiction
12 to investigate, to hold hearings, or seek to ascertain the facts,
13 or make any reports or recommendations as to any of the strictly
14 civil aspects of any labor problem or dispute.

15 It is limited exclusively to investigating and deter-
16 mining the existence of any criminal law violation, both of the
17 State and the Federal laws, that may occur in the area of labor-
18 management relations.

19 Not only this, but it must conduct public hearings as
20 to any such inquiry. It can conduct or hold Executive Sessions,
21 but then only on the request of one commission member who, in
22 his opinion, may feel that there may be a defamatory content or
23 incriminatory content to the investigation.

24 However, it has full power, as I stated, to bring all
25 witnesses before it, to interrogate these witnesses as to the

1 existence of any crime, whether they are of Federal or State
2 origin.

3 These hearings must be public, and furthermore, it is
4 charged with the responsibility of making findings, and these
5 findings relate to the existence of, or probable existence of,
6 criminal law violations, and also to pronouncing official judg-
7 ment on individuals who may be involved in the criminal law
8 violation in question, relating to labor-management affairs.

9 Not only is this commission under the mandatory duty
10 of making these public findings, but in addition to that, this
11 commission is under the mandatory duty of publicizing these
12 findings.

13 Then furthermore, after it has conducted these public
14 hearings, after it has made these public findings, and after
15 it has publicized these public findings, it then becomes its
16 mandatory duty to report its findings and recommendations, to
17 "proper Federal and State authorities charged with the responsi-
18 bility of prosecution of criminal offenses."

19 I submit to Your Honors that this piece of legislation
20 establishes a public body that has (1) an accusatory function;
21 (2) that it must make and it can pronounce official judgments
22 on individuals; and (3) that it must publicize both the findings
23 as to the existence or probable existence of criminal conduct
24 and as to the individuals who may be involved; and that further-
25 more, this is a part of a criminal process.

1 Now, essentially it is an inquiry into brain worthi-
2 ness. If the authorities, or the authorities charged with the
3 responsibility of instituting criminal proceedings themselves
4 should not decide to do so, the commission has the authority
5 to direct the chairman to proceed directly to the filing of such
6 criminal charges, both with the Federal and the State authori-
7 ties.

8 Also, the commission may request that the Governor
9 request the Attorney General to utilize all the powers of his
10 office in the supervision of all the districts attorneys through-
11 out the State, to carry out the recommendations and the findings
12 made by --

13 Q I take it then, as far as the filing of charges
14 is concerned, that the action of the commission is only a recom-
15 mendation? They can't, themselves, effectively file -- they can
16 file a complaint with a law enforcement officer, I suppose, like
17 any citizen can, but they can't officially launch a criminal
18 action.

19 A Not in the technical sense of the word.

20 Q The law enforcement officer still has to make his
21 decision as to whether to actually file the charge and institute
22 a criminal proceeding.

23 A That is correct, Your Honor.

24 My position is that by then, that is somewhat anti-
25 climactic, because the individual involved has already been

1 guilty by the commission, and his guilt was preceded by a public
2 hearing.

3 Q Well, the commission has arrived at its opinion
4 of the matter, I take it, but it certainly doesn't bind the
5 law enforcement official.

6 A I am sure it doesn't bind the law enforcement
7 official, technically.

8 Q It doesn't even bind him to file the charge.

9 A It doesn't even bind him to file the charge, but
10 I am sure that in the ordinary affairs of public government,
11 where that same District Attorney, by virtue of the provisions
12 of the statute, himself is impressed cooperatively as a member
13 of this commission. In other words, he must cooperate with this
14 commission. Every State officer, every employee of the State of
15 Louisiana, is impressed cooperatively into service with this
16 commission.

17 Q Does Louisiana use a Grand Jury?

18 A Yes, sir.

19 Q I suppose there are some crimes that require
20 indictment by a Grand Jury.

21 A Murder is one of them; I mean capital offenses
22 require that. Otherwise, the District Attorney may file charges
23 involving anything short of a capital offense.

24 Q I suppose, then, that the Grand Jury might
25 reject indicting someone, even though the commission has

1 recommended it.

2 A I am sure that is a possibility, Your Honor.

3 As a practical matter, with all the prior pub-
4 licity, with the public condemnation that attaches to the indivi-
5 dual and to the crime involved --

6 Q You suggest that as a practical matter, no pro-
7 secutor could afford to reject one of these recommendations
8 insofar as filing the complaint is concerned.

9 A It would be my judgment that it would be a hazard-
10 ous position for him to assume. He would have to be a very
11 couageous, independent-minded, public prosecutor to resist the
12 force that would be generated by all this prior publicity, be-
13 cause this is an open hearing.

14 While the commission may conduct executive hearings,
15 it cannot refer to that or use that evidence as part of its
16 findings unless all that evidence heard in executive hearing
17 is heard anew in a public hearing. And, of course, in these
18 public hearings, you have the television people there, with
19 their cameras grinding away and publicizing all that is going
20 on before the commission; and furthermore, there are no effect-
21 ive rules of evidence, meaningful rules of evidence. The com-
22 mission hears everything -- hearsay evidence, opinion evidence,
23 innuendos, just anything it chooses to hear, it hears, because
24 there is nothing to regulate the scope and the character of the
25 evidence which is brought before it.

1 Q Was Mr. Jenkins summoned before this commission?

2 A No, sir; he wasn't summoned. The companion party
3 in this litigation was, in the lower court.

4 Q What is Mr. Jenkins' interest in it?

5 A Mr. Jenkins interest is: Number 1, he is a member
6 of the labor union which has been singled out by the officials
7 who have administered this Act.

8 Q Is there anything in the record to indicate that
9 they were interested in Mr. Jenkins as an individual?

10 A The pleadings would indicate that, Your Honor.
11 As I stated, the issues are composed and framed by the pleadings.
12 This was dismissed on a motion by the defense, to dismiss.

13 Q What did the pleadings say about it?

14 A The pleadings state that he is a member of
15 Teamsters Local Union No. 5.

16 Q It alleges that he is in fear of being investi-
17 gated?

18 A Yes. Not only investigated, if Your Honor please,
19 he has been charged with four separate offenses in connection
20 with the investigations.

21 Q Charges by whom?

22 A The charge was in the name of the District Attorney
23 of one of the parishes in Louisiana; however, it was initiated
24 by the Attorney General, who was acting in cooperation with the
25 Labor-Management Commission of Inquiry.

1 Q Did those charges originate with the commission?

2 A Yes, sir. Essentially, yes, sir. They origi-
3 nated on the entire investigation, if Your Honor please.

4 Furthermore, he charges that these charges against him,
5 if Your Honor please, were filed by the officials when they knew
6 they were false charges, and they knew that he was not involved.
7 He has attempted to get a hearing before the State Courts in
8 Louisiana, and he has been unsuccessful. That is all recited in
9 this matter.

10 Q Is there anything in the record to show that this
11 man has ever been called, ever been summoned, or that he will be
12 summoned?

13 A I think the implicit import of the pleading is
14 that he will be.

15 Q What is the explicit allegation with respect to
16 that?

17 A Well, he didn't allege that he had done something
18 or something had happened which actually did not occur, if Your
19 Honor please. But what he does allege, which is of great sig-
20 nificance, I think, is that this commission has embarked upon
21 a course of conduct designed and purposed to destroy the labor
22 union to which he belongs by maligning it, by maligning its mem-
23 bers, scandalizing them, by attempting to destroy this labor
24 union and discredit all of its members.

25 Now, I think Your Honors have recognized in your

1 several decisions that the right to belong to a labor union is
2 a constitutionally protected right under the First Amendment.
3 Furthermore, I think you have held that the right to belong to
4 an association and the right to be free from defamation is also
5 a constitutionally protected right that one has.

6 To that extent, then, we show injury to a constitution-
7 ally protected right.

8 Q It is the other way. It is the right to defame
9 that is constitutionally protected.

10 A I don't know that I interpret the decision of this
11 Court that way, but in the Joint Anti-Fascist Committee decision
12 of this Court, I think the Court expressly held --

13 Q Did Mr. Jenkins hold any office in the union?

14 A It is not alleged, but I think he did at one time.

15 Q But it is not alleged.

16 A No, sir; it is not alleged.

17 Q Well, is his interest any greater than all of
18 the members of the union?

19 A It is greater in the sense that he has been
20 directly attacked.

21 Q Have others been attacked?

22 A Yes, sir; very many of them.

23 Q Well, then, how is his interest so great that it
24 gives him standing to attack this statute?

25 A Because he has individually been attacked, Your

1 Honor. Because his right to belong to a union has been im-
2 paired. His right to have the collective security of associa-
3 tion in his economic existence has been impaired and is threat-
4 ened to be destroyed.

5 Q That is in this allegation?

6 A Yes, sir, Your Honor.

7 Q I didn't see that. Where is that, other than
8 generalities?

9 Well, that is all right. I will find it. Never mind.

10 Q To resume a little more the line of inquiry of
11 my brothers Marshall and Harlan, the complaint in this case --
12 you say this case was on the pleadings, as I understand you.

13 A Yes, sir, Your Honor.

14 Q The complaint appears in the appendix, page 1
15 through 14, and I am interested in knowing where it is alleged
16 there, the interest or the impact of this plaintiff with respect
17 to the commission.

18 A We have a supplemental complaint, also.

19 Q Maybe I missed it, and I certainly don't want to
20 cause you to sit there and thumb through the brief and not find
21 it, but that is, at least for me, a rather important factor in
22 this case.

23 A Paragraph 10 of the original complaint, the com-
24 plaint alleges that there is no factual or legal basis whatever
25 for the filing of such criminal charges against the complainant.

1 The complainant alleges that such criminal charges were filed
2 against him to inflict summary punishment upon your complainant
3 solely because he is a member of Teamsters Local Union No. 5,
4 and et cetera from there.

5 Q But those are criminal charges, initiated in the
6 ordinary way by the State of Louisiana.

7 A No, sir; it is not in the ordinary way; it is as
8 a result of the alleged conspiracy among the employees and repre-
9 sentatives of this Labor-Management Commission of Inquiry, whom
10 it is alleged have singled out this particular union for repres-
11 sive action.

12 Furthermore, we allege in the supplemental petition
13 that they have singled out six officers of the union for murder.

14 Q For murder.

15 A Yes. Then we have a supporting affidavit from
16 an undercover agent of the Labor-Management Commission of In-
17 quiry that we attach to the supplemental petition.

18 Q Who were the members of this commission?

19 A I can't recall them by name, Your Honor.

20 Q Was the Dean of the Law School one of them?

21 A One Dean of the Law School, I think the chairman
22 was another Dean of a Law School. There was a banker. In fact,
23 the lower court commented on the fact that they were involved,
24 and the implication was that because of their position, it was
25 unlikely that they would engage in the conduct described in the

1 complaint. It would suggest that --

2 Q It is not an everyday occurrence, is it?

3 A Well, of course, we speak also of vicarious
4 liability, if Your Honor please, because under Monroe versus
5 Pape, Your Honors have applied the civil rights statute vicar-
6 ously, or the liability of it vicariously, and we speak in that
7 context. We didn't necessarily speak that the officers were
8 directly involved, but we have serious charges and I am satis-
9 fied that the plaintiff can substantiate these serious charges
10 with credible evidence in support of them.

11 Q You don't contend that your client's own right
12 to be represented by counsel was violated here, do you?

13 A I am sorry; I didn't understand, Your Honor.

14 Q What constitutional rights of your client were
15 violated here? His right to counsel? His right to cross-
16 examination?

17 A He was not called before this commission, and it
18 didn't become a past fact that he was denied this, but he is one
19 who has been singled out for this repressive action.

20 Q What constitutional provision do you invoke here,
21 then?

22 A We invoke this constitutional provision: Because
23 of his material interest in this litigation, because this State
24 agency seeks to destroy his union and his membership in it and,
25 consequently, his right to economic security, and because they

1 are daily defaming him, as such, in that capacity, he is being
2 denied a constitutionally secured right, and therefore, he has
3 been enabled to challenge the statute, and the challenge is
4 this, if Your Honor please --

5 Q What?

6 A The challenge is that this commission is author-
7 ized, Number 1, to function as an accusatory body; Number 2,
8 to accuse him, and anyone else, of being a public enemy.

9 Q What is the constitutional right that is invaded
10 here?

11 A He is without the right to the assistance of
12 counsel, without the right to examine or cross-examine witnesses
13 appearing before that commission, without, of course, the right
14 of having definable standards of guilt or innocence before they
15 pronounce him guilty of any offense, and without the right to
16 have the application of meaningful rules of evidence.

17 I think implicitly in the Hannah decision is a conclu-
18 sion by this Court, and certainly the Joint Anti-Fascist Commit-
19 tee, that no public body can defame an individual in this manner,
20 can destroy him, unless you accord to the individual the right
21 of confrontation, the right of cross-examination --

22 Q Well, the Grand Jury can indict somebody and never
23 have him before it, or let him cross-examine witnesses.

24 A If Your Honor please, the Grand Jury does not --

25 Q Are you challenging the Grand Jury?

1 A No, sir; I do not have that burden. The Grand
2 Jury does not conduct a public hearing.

3 Q But they indict somebody and charge him with a
4 crime.

5 A If Your Honor please, the ultimate charge in it-
6 self is not the gravamen of the complaint. It is that there is
7 a public pronouncement of guilt. One is branded as a public
8 enemy, preceded by a public hearing where persons are sworn,
9 where there is no compliance with the rudiments of fair play and
10 due process, there are no meaningful rules of evidence.

11 After he is found guilty, as such, and that guilt is
12 publicized, and that finding forms part of a process of crimi-
13 nal prosecution, because the whole objective, the whole aim,
14 the whole purpose of the hearing is to bring about the criminal
15 prosecution of an individual after he has been found guilty of
16 the charge that ultimately is lodged against him.

17 Q Suppose this investigation had been undertaken
18 by the Louisiana Legislature rather than this commission? What
19 would your position be?

20 A I don't think it would make a substantial differ-
21 ence. I think that any time --

22 Q May I intervene? I beg your pardon.

23 Suppose the Legislature said "We are conducting an
24 investigation not for lawmaking purposes, but for the purpose
25 of making a determination as to whether somebody has violated

1 the criminal law." Isn't tha the gravamen of your complaint
2 here, that this committee set up not merely to investigate, but
3 to make and publicize a determination as to criminal offense,
4 and then they report that. In so many words, the statute says
5 that, doesn't it?

6 A I think the statute goes one step farther than
7 that, if Your Honor please. It not only states that this is
8 what this commission is set up to do, to investigate whether or
9 not laws have been violated; but furthermore, this commission
10 must make a public finding. It must make findings that directly
11 affect the rights of individuals.

12 Q Naming persons.

13 A Naming persons.

14 Q Now, to get back to Justice Harlan's question,
15 suppose a legislative committee were set up for this precise
16 purpose; that is, to ascertain whether criminal laws have been
17 violated and to name specific persons for that purpose. Do you
18 or do you not consider that that would be within the Legislature's
19 constitutional prerogative?

20 A I believe in that context, where there is no
21 purpose to gather evidence for the purpose of enacting legis-
22 lation of a remedial character, where the sole function is to
23 make an official or public judgment as to guilt or innocence of
24 a citizen, I think in that context, even if the Legislature is
25 acting, that rigorous demands of due process must be complied

1 with, that the individual have the right to cross-examine wit-
2 nesses, have the right to the effective assistance of counsel
3 and all the panoply of due process that is envisioned by the
4 Fourteenth Amendment to the Constitution.

5 But this is not the end product or the end result of
6 the ultimate purpose of this particular legislation. They go one
7 step further. They have the mandatory, inescapable duty of then
8 proceeding to present this to the State and Federal authorities
9 charged with the responsibility of instituting criminal pro-
10 ceedings.

11 This is far removed from legitimate legislative investi-
12 gation where evidence is gathered, no formal judgment of guilt
13 or innocence is pronounced, but evidence is gathered to be
14 culled and sifted and be considered by members of the Legislature
15 for the purpose of attempting to institute remedial legislation.
16 This is not involved in this particular case.

17 The whole purpose is to force, publicly condemn, and
18 that is preceded by formal hearing where the oath is solemnly
19 intoned and then there is condemnation; and not only condemnation,
20 but there is the additional step where the committee, and the
21 executive committee, must then go forward and file and present
22 this to the authorities charged with the prosecution of criminal
23 law violations.

24 In addition to this, it has the authority itself to
25 go forward and file these charges.

1 Q What else must they do, besides reporting it to
2 the prosecuting officers?

3 A They make their recommendations and their findings
4 to the proper authorities.

5 Q Are they directed to publish it to the world?

6 A Publish it to the world?

7 Q Are they directed to do that in the Act?

8 A Yes, sir. It is an inescapable, mandatory duty.
9 They must publicize their findings, and all the evidence upon
10 which their findings are based must, themselves, be public.

11 Q I think this Court has rejected that argument in
12 connection with the Un-American Affairs Committee, where they
13 allege that they were being investigated in order to publicize
14 them and to bring them into humiliation and disgrace. I think
15 this Court has rejected that, over my protest. I think it has.

16 A I think this goes one step further than that.
17 They actually have the power to say who is guilty and who is
18 not guilty.

19 Q Well, that was alleged in that case, that the
20 committee was to go out and pick up people and point out if they
21 were guilty, and publicize it, merely to publicize them and
22 bring them into disrepute and disgrace.

23 A I am not familiar with the decision that Your
24 Honor is referring to except to say --

25 Q I presume what you are arguing is that a thing

1 like that should only be done in a court of law, basically.

2 A Yes, beyond any question.

3 Q What you are alleging is a violation of due pro-
4 cess of law unless they do it in a court of law, if it is to be
5 done.

6 A That is correct, because, of course, the result,
7 the harm, is aggravated by the fact that this resides exclusively
8 in the Executive Branch of government. We have a system of laws
9 in the State, just like any other States, where these matters
10 are handled by the Grand Jury in private discussions, where no
11 one is publicized, as such; there is no evidence to show his
12 guilt. The whole State of Louisiana sits as a jury while this
13 individual is being formally accused of crime and is actually
14 found guilty of crime.

15 Q Do you have Grand Jury presentments in your State?

16 A We do, Your Honor.

17 Q As contrasted with indictments?

18 A No, sir, Your Honor; we have indictments.

19 Q You do? Do you have presentments, or don't you?

20 A I am not familiar with presentments. I am only
21 familiar with indictments, the only thing we have.

22 Q What is this conspiracy to murder business? That
23 is in the amended complaint?

24 A Yes, sir; that is in the amended complaint. It
25 is alleged that investigators for this commission were instructed--

1 and this came from one of their former undercover agents -- were
2 instructed to shoot named individuals, or kill them, so long as
3 it was done in self-defense. Incidentally, this is in connection
4 with the fact that this statute gives immunity to every employee
5 and every official and every agent of this commission for any-
6 thing they do.

7 Q For murder?

8 A It says immunity for anything they do while in
9 the performance of any duty assigned to them. The statute ex-
10 pressly grants it to them.

11 Q How do you get away from Hannah versus Larche?

12 A Because Hannah was not an accusatory function,
13 Your Honor. It did not involve an accusatory function. Hannah,
14 for example, wherever there was a defamatory content or an in-
15 criminating content, Hannah went into executive session. It had
16 to. The language of this Court said it shall go into executive
17 session and this information is released only with the consent of
18 the commission.

19 The contrary is true in this case. This commission
20 must conduct public hearings. If it goes into executive ses-
21 sion, it cannot utilize what evidence it has developed in that
22 session, and if it seeks to do so, it must re-present anew all
23 this evidence in a public hearing.

24 Q What is the history of this legislation?

25 A There was some claim --

1 Q Is there anything shown about what its object is?

2 A No, sir. Well, in the preamble it is shown that
3 there was a shutdown of the industrial complex in Baton Rouge
4 some months preceding the enactment of this legislation and, thus,
5 there was an emergency created and this commission was created.
6 That is the long and short of it.

7 Q I noticed in here some of your allegations have
8 to do with James Hoffa and a man named Partin. What is that back-
9 ground, because I see it is an allegation in the complaint.

10 A Yes, it is.

11 Q What is the background for this?

12 A Yes, sir, I will give you the background, if
13 Your Honor please.

14 Mr. Partin, who heads this union, was the star witness
15 who testified on behalf of the Government against Mr. Hoffa in
16 Mr. Hoffa's prosecution. There is a background there, a con-
17 tinuing background of efforts being made to get Mr. Partin to
18 recant his testimony so as to be used as a basis to grant Mr.
19 Hoffa a new trial.

20 There have been statements of bribery of State officials
21 and otherwise or attempted bribery of Mr. Partin. There are
22 criminal charges pending in the State courts involving the very
23 same thing. There is a Dalton Smith charge with attempting to
24 bribe Mr. Partin and other individuals, and this is part -- in
25 other words, the effort to bribe Mr. Partin, apparently from

1 what is available, the information that is available, includes
2 State officials, and it is part of an effort to force Mr. Partin
3 into recanting his testimony.

4 This sounds somewhat strange, but I only advocate the
5 rights of my client, and that is what the evidence demonstrates.

6 Q This commission is engaged in trying to do that,
7 to bribe Partin, and so forth?

8 A That is the conviction of my client, and there
9 seems to be, apparently, evidence available to support that
10 charge.

11 Q Your client is a member of the union of which
12 Mr. Partin is the head.

13 A Yes, sir.

14 Q And he thinks that Mr. Partin is being damaged,
15 right?

16 A Well, I think the whole union is being damaged,
17 is being characterized. The Governor has called them gangsters,
18 hoodlums.

19 May I point this out: Furthermore, the Governor stated
20 that anybody who would give testimony in support of a conspiracy
21 charge involved in this particular case, in the Martone case,
22 would be charged with perjury. Mr. White, the undercover agent
23 who signed this affidavit, within 30 days -- it was filed in the
24 Federal District Court -- within 30 days a member of the commis-
25 sion filed perjury charges against Mr. White in State court,

1 based upon his allegation that these people were involved in a
2 conspiracy to commit murder and, furthermore, were involved in
3 a conspiracy of bribing people and fabricating evidence against
4 these people.

5 Thank you, Your Honor.

6 MR. CHIEF JUSTICE WARREN: Mr. Stewart?

7 ARGUMENT OF ASHTON L. STEWART, ESQ.

8 ON BEHALF OF APPELLEES

9 MR. STEWART: Mr. Chief Justice, and may it please the
10 Court:

11 The preamble of this statute provided that there had
12 been a shutdown in construction work in the vicinity of Baton
13 Rouge and that because of the great need for statewide investi-
14 gatory powers, which they did not have at the time, and to aid
15 and assist the District Attorneys and Grand Juries and law
16 enforcement officers, they enacted this legislation in order to
17 create this investigatory commission.

18 First off, it specifically provides that the commis-
19 sion should not make any adjudication as to the guilt or inno-
20 cence or as to any man's property rights, just as was held in
21 Hannah versus Larche.

22 Q By "adjudication" do you mean assertions or do
23 you mean a legal adjudication?

24 A A legal adjudication. They could make findings.

25 Q In other words, they couldn't convict someone.

1 A No, sir.

2 Q Were they limited in any way in their accusatory --

3 A They had no authority to accuse anyone, just as
4 in the Civil Rights Commission, that commission had authority
5 to make findings, and so did this commission have the authority
6 to make findings.

7 In addition to that, they went further and spelled out
8 the words that counselor plays on. It says it "may include in
9 its findings general conclusions or particular inclusions as to
10 particular individuals." I may not have the exact words, but
11 that was what it could include in its findings.

12 Q Are they required to publish those findings?

13 A Yes, sir. The statute does say so, but, of
14 course, all public reports such as this report or the Civil Rights
15 Commission report would have been filed and publicized by being
16 made public. This report of this commission was to be filed
17 with the Legislature and the Governor, and, of course, that would
18 have made it publicized also.

19 Q What is the object in publicizing them, if not
20 to punish them or to hold them up to public humiliation and
21 disgrace?

22 A The only object I could understand from the
23 statute, if it please the Court, is that they especially wanted
24 everything in the public eye with reference to this. It em-
25 broiled the community in such a tremendous manner that they

1 wanted everything out in the open and public. That is the
2 reason they required all the hearings to be heard in public.

3 Q As a matter of fact, all civil matters in the
4 labor-management field are expressly excluded from the jurisdic-
5 tion of this commission, are they not?

6 A Yes, sir.

7 Q And the commission's jurisdiction is limited only
8 to violations of the criminal law in the field of labor-manage-
9 ment relations, is that right?

10 A Yes, sir.

11 Q With the express exclusion of civil matters.

12 A That is exactly right, sir.

13 Q So that it is supposed to have public hearings
14 and make a public report, identifying individuals, and making
15 findings that they have violated the criminal laws of Louisiana
16 or the United States; is that right?

17 A They were supposed to make findings, and the Act
18 provided that they may include in those findings particular
19 individuals.

20 Q Only on violations of the criminal law.

21 A Yes.

22 Q And if they come across any labor-management
23 problem which is not a violation of criminal law, they are sup-
24 posed to exclude it from the scope of their operations.

25 A Yes. That is exactly so.

1 Q Is that the same as the Civil Rights Commission?

2 A Yes, sir.

3 Well, I wouldn't want to answer that right off, but
4 the Civil Rights Commission statute does provide that they make
5 findings, and I am reading from 1975 --

6 Q But is it limited in its jurisdiction to nothing
7 but criminal cases?

8 A Yes. The Civil Rights Commission is limited to
9 voting denials and in that respect they are similar; yes, sir.
10 It is investigation, and in Hannah versus Larche there was the
11 same contention made, that they would publicize and hold these
12 people up to scorn because of having committed some crime with
13 reference to the voting thing, and that is the same identical
14 argument being made here.

15 Q You are not saying, are you, that the Civil
16 Rights Commission involved in Hannah versus Larche was supposed
17 to confine itself to violations of the criminal law?

18 A No, sir; I didn't attempt to say so.

19 Q I didn't think you said that.

20 A No, sir; if I did, I am sorry.

21 Q As I understand it, what you have is a State
22 proceeding in which you have no judge, no court, to call wit-
23 nesses in to examine to see if you can find particular indivi-
24 duals who have been guilty of a crime, and then the duty to
25 publish it, so the public will know about it. Is that what it is?

1 A It could be that, Judge.

2 Q Is it not that? What is it, if not that?

3 A Well, I would say it is exactly what the Civil
4 Rights Commission was. It had a right to have hearings --

5 Q I am not interested in the Civil Rights Commis-
6 sion. What about this one?

7 A That is exactly right. It has a right to hold
8 hearings, make investigations, report to the Legislature, and to
9 the Governor, and it may include in its report particular indivi-
10 duals; yes, sir.

11 Q Charging people with being guilty of a crime.
12 Are they entitled to an attorney?

13 A Yes, sir. Under the statute, they are entitled
14 to, just as in the Civil Rights Commission, be accompanied by
15 an attorney, but he is not given the right to cross-examine the
16 other witnesses without --

17 Q You cannot cross-examine any witnesses. It is not
18 anything like a court proceeding.

19 A No.

20 Q Well, Mr. Stewart, as I understand it, they hold
21 these hearings and they air everything in public, and then they
22 find that they have violated (a), or several criminal laws of
23 the State of Louisiana.

24 A Yes, sir.

25 Q That is right?

1 A Yes, sir.

2 Q And then they refer it to a trial court, the
3 prosecutor; right?

4 A There is an authority of prosecution; yes, sir.

5 Q What is the purpose of sending it to the court
6 when you have already found them guilty?

7 A Well, this commission cannot do anything to de-
8 prive him of any of his rights.

9 Q Except to find him guilty without a trial.

10 A The same way with a Grand Jury; yes, sir. They
11 can charge him, or say that that is their opinion.

12 Q Am I correct that in Louisiana the Grand Juries
13 are not public?

14 A You are certainly correct; yes, sir.

15 Q But this is public.

16 A This is a public hearing; yes, sir.

17 Q And findings.

18 A Findings; yes, sir.

19 Q And the findings are either that you have or you
20 have not violated the criminal law.

21 A It could be; yes, sir.

22 Q A State official body finds you guilty; isn't
23 that what they do?

24 A Well, I wouldn't say so, any more than any other
25 commission, no more than any legislative commission or committee.

1 They can make observations. The statute says "to make findings,"
2 and that is what every legislative commission --

3 Q Well, what would your idea be of a finding? We
4 find Joe Doaks what -- guilty of violating such-and-such a
5 statute? What would your word be?

6 A I would think that would be sufficient, Judge.

7 Q You say he is guilty.

8 A That would be a finding. A finding would encompass
9 that.

10 Q And then you give him all the due process after
11 that.

12 A Well, if we have a situation, as we have here,
13 with these conditions going on, and the jurisdiction of the
14 District Attorneys and Grand Juries limited to parish limits,
15 they needed something because this industrial complex encompassed
16 far more than one or two parishes. They needed some help. What
17 were they to do?

18 They certainly publicized by making everything public.
19 The public, of course, could judge very well if someone was
20 doing something unfairly. I think that was one of the salutary
21 features of the statute; that it was public and not private.

22 Q How is the commission selected?

23 A It is appointed by the Governor. There have to
24 be three from labor, three from management, and three from the
25 public. It did include the Dean of the Tulane University Law

1 School, who was chairman; the Dean of Louisiana State University,
2 who was Vice Chairman.

3 Q Did he accept it?

4 A Yes, sir; he accepted and served. Both have since
5 resigned and are not with it any more.

6 Q The Dean of the Law School accepted.

7 A Yes, sir.

8 Q Two Deans of Law Schools accepted.

9 A Yes, sir. Both of them actually accepted and
10 served. Dean Morgan was Chairman and Dean Ebert was Vice Chair-
11 man until recently. There have been no hearings since those two
12 have stepped down.

13 Q Did the commission get out any rules and regu-
14 lations?

15 A There were more or less spelled out in the
16 statute, but they had to do exactly what they did in the Civil
17 Rights Commission.

18 Q I see they have power to publish rules and regu-
19 lations. Did they do that?

20 A Not that I know of, any different than those in
21 the statute.

22 Q Has the commission assigned of its personnel to
23 the State Police under 880.6(c)?

24 A I am sure they have, sir. That is not in the
25 record.

1 Q I notice that provision provides that upon request
2 of the Governor, the commission may assign all or part of its
3 investigatory force to the State Police to assist them in investi-
4 gating any violations or probable violations of law, and in
5 apprehending all persons engaged in violation of law. What does
6 that mean?

7 A That is the general duty and obligation of the
8 State Police. Any time they needed help, these could be assigned
9 to the State Police.

10 Q You mean the commission can have its personnel
11 operate as part of the State Police and make arrests, and so on?

12 A Yes, under those circumstances --

13 Q And you say it has done that.

14 A I am sure it has; yes, sir.

15 Q Does this Civil Rights Commission have that power?

16 A No, sir.

17 Q You have been saying all the time it is identical
18 with the Civil Rights Commission. We have already found some
19 rather important differences, it seems to me.

20 A Well, with reference to the procedures here, they
21 are identical with the Civil Rights Commission. The court below
22 said the procedures were drafted with the Civil Rights Commis-
23 sion as a model.

24 Q There is no responsibility or power in the Civil
25 Rights Commission to charge anybody with a crime, is there?

1 A No, sir.

2 Q There is in this situation.

3 A No responsibility, but they do have the authority --

4 Q The authority, and they do do it, don't they?

5 A Not that I know of, sir.

6 Q I thought it was said that they had done that.

7 A No, sir; not that I know of. The commission

8 hasn't been overly successful.

9 I would like to answer some other questions that have
10 been raised here with reference --

11 Q Would it be relevant as to why the two Deans
12 retired from the commission?

13 A No, sir; I do not think so. My understanding is
14 that Dean Morgan was already retired from another position, and
15 he wanted some peace. He just served temporarily, it is my
16 understanding, at the behest of the Governor, until this investi-
17 gation of the Baton Rouge business was over with, and after that
18 he did step down. The same with Dean Ebert.

19 It was quite different from the three labor members.
20 They resigned for other purposes, because of a Civil Service
21 argument, I believe.

22 Q Well, how many are on this commission?

23 A Nine.

24 Q How many have resigned?

25 A Well, I know that Dean Morgan and Dean Ebert have

1 resigned, and the three labor members, they resigned separately
2 here recently. The Governor hadn't accepted their resignations,
3 so they came back and they have been holding some executive meet-
4 ings.

5 I do not know. I do not represent the Labor-Management
6 Commission. I am just handling this litigation. I am not
7 familiar with what they are doing, or such as that.

8 We would like to say that there is nothing in the
9 record to show that any of these charges against Mr. Jenkins were
10 filed by this commission, that is, the assault charges. There is
11 nothing in the record to show. The allegation that was read was
12 that these charges were filed in conspiracy with the commission.

13 The affidavit of Mr. George with reference to the
14 murder count is quite different, I think, than saying that he
15 had made that allegation. He said that he was advised that
16 these various men could be sought and killed by members of the
17 Commission of Inquiry at the slightest provocation in a manner
18 that would make it appear to be an act of self-defense, and we
19 would like to add here that all of the allegations with refer-
20 ence to the administration of the statute, and we have argued
21 it at length in our brief, have no cause or connection with the
22 administration of the statute; the charge, for example, that
23 Mr. Jenkins himself was fired on by the District Attorney. That
24 had no causal connection with the commission, because they can't
25 do that.

1 It is not that they did it. He did not allege that.
2 The causal connection is back in 2 where they say that the com-
3 mission has threatened to kill these six people. That has no
4 causal connection with the administration of the statute.

5 There are many other things they have alleged here
6 that have no causal connection with the administration of this
7 statute.

8 We would like to touch on the lack of jurisdiction here,
9 the mootness, on the basis of the lower court's decision. Here
10 this plaintiff has not alleged that he was about to be called,
11 or that he has been called, or that he was being investigated,
12 or that he was about to be investigated.

13 He has said that he is suing as a member of a class
14 and he hasn't even alleged, so far as we can read his petition,
15 that any members of the labor union that he belonged to were
16 subpoenaed or were about to be subpoenaed or were being investi-
17 gated.

18 Q He doesn't allege that he was an object of the
19 investigation itself?

20 A No, sir; he does not.

21 Q I thought I understood him to say that State
22 charges had been filed against him as a result of the commis-
23 sion's work.

24 A That is not in the record.

25 Q It isn't alleged in the complaint?

1 A No, sir.

2 Q There is nothing in the record about it?

3 A Well, I won't say that. He has said that the
4 Labor-Management Commission, in conspiracy with the District
5 Attorney, filed these charges against him. Now, if you can eke
6 out of that that that was the commission's doing, that is some-
7 thing else, but that is the only allegation --

8 Q Was there any allegation in the record, or any-
9 thing to reveal whether or not any witnesses were called to
10 testify against him?

11 A No, sir; there is nothing to that effect here.

12 Q No indication in the record that he was the
13 object of any commission hearing?

14 A Nothing in the record.

15 Q Or the object of any findings by the commission?

16 A Nothing in the record. He is a stranger to these
17 proceedings, and if the Court were to grant the injunction, it
18 would not help him in accordance with the record.

19 Q He says he is a member of the union, and the con-
20 spiracy is against the union, doesn't he?

1 A Only the broad term "conspiracy", sir. But when
2 he gives any factual connection, he talks about this murder
3 business and these charges filed by the District Attorney and
4 other charges such as someone being arrested by an arrest war-
5 rant, and searched by a search warrant in a flamboyant manner,

1 such as that, but there is nothing here to tie in the procedures
2 that he has any causal connection with the administration of the
3 statute.

4 Q It is some connection, isn't it, if he is a
5 member of a union and he alleges a conspiracy to destroy the
6 union of which he is a member?

7 A Well, only that broad statement, but all the
8 facts in here allege -- none of the facts have any causal con-
9 nection --

10 Q I thought this was up on the allegations.

11 A Well, he does make the statement, as you have
12 quoted, but in the explanation of it he goes on and sets out all
13 the facts, and we take it that those --

14 Q Did he purport to set out all the facts?

15 A I wouldn't say he purported to set out all the
16 facts; no, sir. I am incorrect on that. He sets out the facts
17 that are in this petition, all the facts that are in this peti-
18 tion as amended.

19 Q Is it true, Mr. Stewart, that he is a member of
20 the union which caused the work stoppage which brought about this
21 statute?

22 A I would think that my recollection -- that is
23 not in the record, but my recollection is that one of the big
24 problems was the jurisdictional problem between the electricians
25 and the teamsters, and he was a member of one of those unions;

1 yes, sir.

2 Q He is a member of the Teamsters.

3 A Yes, sir; the Teamsters.

4 Q There is some connection.

5 A Yes, sir; on that basis.

6 Q They brought about the statute, didn't they?

7 A Well, now, that is only one side. The accusations
8 were quite broad and long, but there were many other people who
9 brought it on, too.

10 Q I am only using your statute. When we get into
11 the statute, it says that this is the reason for it.

12 A No, sir; it only says that there was an industrial
13 shutdown affecting thousands of people in this community, in the
14 construction of industrial plants; yes, sir. That is what it
15 says.

16 Q Well, can you have construction of industrial
17 plants without trucks?

18 A No, sir. I have not said, nor intended to say,
19 that the labor union of the Teamsters was not included in the
20 investigation and not included in the real basis for having
21 enacted the statute. But there were many other facets to it,
22 and the statute did not attempt to spell out which particular
23 one, or the numerous ones they were relying on.

24 It just says we have this bad situation. We need to
25 get statewide power of investigation. We need to have some

1 assistance to the Grand Juries and to the District Attorneys.

2 Q May I ask you, sir, has this commission filed any
3 official reports of its actions? Is there a record anywhere
4 that would be available to us as to what the commission has done?

5 A There was a report filed, if it please the Court,
6 but it did not go into any particular person. It did say in
7 generalities, and most of this is anticlimactic, because the
8 whole problem has been tied up in court, such as this case, and
9 any time you get ready to subpoena a witness you have a problem.
10 They have had their hands more or less tied.

11 It has not functioned as it was anticipated that it
12 would function, and it probably will not, unless this Court
13 finally approves it.

14 There have been no findings that any particular per-
15 son was guilty of anything. There have been no findings such as
16 that.

17 Q Has there been an annual report or some other
18 official report that would be available to us, or official re-
19 ports of action taken from time to time, regardless of what they
20 said?

21 A Yes, sir; there was one, to my recollection, not
22 too long back. That could be available and we would be happy to
23 make it available if the Court desires.

24 Q Have they held any public hearings?

25 A They some originally. They have not held any

1 since the time of this case. In my recollection, they have not
2 held a public hearing -- and I could be wrong, but I think I am
3 not -- but when these injunctions started issuing, they have
4 not held another public hearing since then.

5 Q What injunctions?

6 A Well, we had one in the Martone case. It came up
7 through the State courts.

8 Q On the question of whether he has been complained
9 against by this group or whether the prosecution has been started,
10 I notice on page 7 of the transcript it says, "Furthermore, com-
11 plainant alleges it more specifically applies to him that in
12 furtherance of said conspiracy, on February 16, 1968, one Sam
13 Caseo, while acting in concert with defendants herein, and acting
14 under cover of law while functioning as District Attorney, filed
15 in the 18th Judicial Circuit," and then he goes on to recite two
16 charges of assault with a deadly weapon against him.

17 So he does actually charge that they have engaged
18 unlawfully in law enforcement actions against him under the powers
19 of this commission, doesn't he?

20 A No, sir. My understanding is that the commis-
21 sion had no authority whatsoever to file any informations or
22 such as that against a man. We have cited in our brief that
23 only the District Attorney can do that, or a Grand Jury.

24 Q Well, it said the District Attorney did it in
25 collusion and in a conspiratorial way with these people as the

1 conspirators.

2 A Well, that is what he said, but our answer is
3 that they have no authority to do that, they have no control
4 over the District Attorney. They have nothing more than the
5 right of any citizen to go down and complain against somebody.

6 Q Well, they could conspire to help him a little,
7 couldn't they?

8 A Oh, yes; they could conspire for such as that,
9 but only the District Attorney can make that decision, or only
10 the Grand Jury.

11 Any other questions?

12 Thank you.

13 MR. CHIEF JUSTICE WARREN: We will recess now.

14 (Whereupon, at 2:30 p.m. the argument in the above-
15 entitled matter was concluded.)